



July 5, 2018

Susan Bodine, Director
Office of Enforcement and Compliance Administration
Environmental Protection Agency
Washington, D.C.

Dear Ms. Bodine,

Thank you for the opportunity to provide comments on the Environmental Protection Agency's (EPA) proposed *Oil and Natural Gas Exploration and Production Facilities New Owner Audit Program Agreement* (Agreement). Please accept these comments on behalf of Earthworks, a nonprofit organization dedicated to protecting communities and the environment from the impacts of energy development while seeking sustainable solutions.

At the outset, voluntary programs are neither a substitute for mandatory compliance nor a mechanism for enforcement. EPA cannot meet its objectives of efficient compliance, easing regulatory burdens, cleaner air, and better health outcomes while shifting away from holding polluters accountable. This Agreement grants absolution for bad behavior in exchange for a new purchaser's promise to improve.

Community Empowerment Project

Earthworks over the last four years has developed an air monitoring program of oil and gas facilities based on Optical Gas Imaging (OGI). Our Community Empowerment Project (CEP) makes visible otherwise invisible air pollution from oil and gas operations, allowing residents and workers to see what they are exposed to and often determine where emissions leaks need repair. We do so primarily through the use of Forward Looking Infrared (FLIR) cameras—the same technology used by industry and agencies, including EPA, the Bureau of Land Management (BLM) and a variety of state regulators.

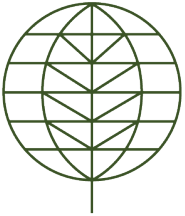
This technology is the same contemplated by this Agreement and our thermographers receive the same training and certification as other OGI camera operators. To date, we have documented oil and gas pollution at hundreds of sites in 15 states, as well as Canada, Mexico, and Argentina. (For details on CEP and playlists of emissions videos, see https://earthworks.org/stories/citizens_empowerment_project/).

Our thermographers have learned valuable lessons relevant for this audit program. Among them, determining from an OGI video whether a given emissions leak contains Volatile Organic Compounds (VOCs) poses challenges. For this reason, this Agreement's focus on detecting only VOCs from oil and gas tanks is misplaced. As discussed further below, the auditors should look for all emissions (regardless of content, cause, or legal status) including methane, other hydrocarbons, and VOC leaks, especially from open hatches, leaking seals, careless operation, poor maintenance, start up and shutdown operations (sometimes called "upsets"), and during the course of all Normal Operations.

Dedicated to protecting communities and the environment from the adverse impacts of mineral and energy development while promoting sustainable solutions.

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Audit

The concept of a “self-audit” is a contradiction. To become eligible for this Agreement, EPA should prepare a list of authorized, qualified third-party auditors to perform this important function. In some cases, the auditors could come from the private sector, academic institutions, or nongovernmental organizations. Tank purchasers should pay for the audit, but EPA should choose the auditor and the purchaser should not know who performs the audit.

Methane

EPA already has a methane rule, 40 CFR 0000a for new tanks (Methane Rule). Yet instead of enforcing this rule, EPA is in the process of rescinding it. Instead, EPA proposes this voluntary program of self-auditing. Worse, methane is not mentioned anywhere in this Agreement. As a practical matter, VOC emissions tend to “hitchhike” along with methane leaks from tanks. Yet, auditors may struggle to distinguish between gas plumes containing VOCs and methane from other plumes or leaks containing methane and other hydrocarbons.

Therefore, EPA should ensure this Agreement requires auditors to also look for methane and other hydrocarbons in addition to VOCs.

Violations

This Agreement limits only to Violations some of its most important elements: Corrective Actions, the Self-Audit Programs, and Final Determinations.ⁱ This scope is much too narrow given the most common and easily fixable problems associated with tank emissions are defined in this Agreement as Malfunctionsⁱⁱ, Compromised Equipmentⁱⁱⁱ, and/or Normal Operations.^{iv}

These categories of leaks tend to be easily detectable and cost relatively less time, money, or effort to satisfactorily resolve, yet sometimes do not rise to the level of Violations. As a practical matter, tank vapors often leak from improperly sealed, corroded, or open thief hatches. As a regulatory matter, too rarely do these problems constitute Violations. In addition, many regulators opt to give operators time to fix the problems rather than issue violations, a fact that makes the Agreement’s limitation even less meaningful.

EPA should instead prioritize Violation prevention. Open thief hatches or leaking tanks commonly result from Malfunction, Compromised Equipment, poor maintenance, careless operation, as well as Normal Operations. For this reason, this Agreement should apply to these root causes of VOC and methane leak sources. Catching methane leaks and venting sooner will result in lower costs to this Agreement’s parties. By contrast, requiring Companies to only self-audit and fix Violations will increase compliance costs beyond what they otherwise may be had the Audit revealed the problem sooner. Finally, fixing all leaks, not just Violations, more quickly will result in cleaner air and better public health outcomes.



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States

This Agreement will achieve no success unless the States become enthusiastic parties to it. Optimally, EPA would execute this Agreement in a state where permit conditions specifically address the most common causes of tank leaks from the categories of relatively easy, fixable problems, especially Malfunctions, Compromised Equipment, Normal Operation, careless operation and poor maintenance.

Pennsylvania's new General Permit 5 (GP-5) for new minor source oil and gas facilities requires quarterly Leak Detection and Repair (LDAR). Upon notification of a leak, the operator has fifteen days to conduct a repair. The states of California and Colorado have similar requirements. Ostensibly, failure to comply with these permit conditions would constitute a Violation for the purposes of this Agreement.

Unfortunately, state enforcement already tends to fall short.^v Many states lag far behind in updating their regulatory apparatus to meet the trends of leaking tanks documented by Earthworks and other researchers. Our experience, especially in Texas, demonstrates that permit conditions fail to cover the categories of tank leaks this Agreement already excludes from Audits and Corrective Actions like Malfunctions, Compromised Equipment, Normal Operations, careless operation and poor maintenance. That is, leaking and venting tanks too often result from simple negligence or wear and tear- problems typically not included in permit conditions and excluded from this Agreement's protocols.

Therefore, this Agreement will effectively miss the most common causes of tank emissions and therefore contributes little to preventing them.

Conclusion

Rather than proposing that operators volunteer to perform self-audits, EPA should enforce its new source Methane Rule and move forward with an analogous rule applied to existing tank sources.

Self-audits are no substitute for enforcement. Yet, if EPA goes forward with this program, it should ensure that tank owners cannot act in bad faith. For instance, operators should be prohibited from selling leaking tanks to new purchasers before the seller's audit program is finalized or takes effect.

Auditors should be selected by EPA and independent from tank owners. Audits should look for methane, VOCs, and other hydrocarbons, and should report Violations, Malfunctions, Compromised Equipment as well as leaks detected during Normal Operations or from careless operation or poor maintenance.

We appreciate EPA's intention with this proposal to improve enforcement, air quality, and public health. To do so, this Agreement must focus upon the real causes of tank leaks and be conducted in such a way as to actually result in emissions reductions.

Sincerely,



Aaron Mintzes
Senior Policy Counsel

- ⁱ Violation means noncompliance with an applicable requirement under the Clean Air Act, its implementing regulations, and federally- approved and enforceable requirements of applicable State Implementation Plans (SIPs), including federal and state permits and permitting requirements.
- ⁱⁱ Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operations are not malfunctions.
- ⁱⁱⁱ Compromised Equipment mean equipment associated with a Vapor Control System that is beginning to show signs of wear beyond normal wear, and that cannot be addressed by cleaning the equipment. Examples include, but are not limited to, cracks or grooves in gaskets, abnormally or heavily corroded equipment, beveling or other indications of inefficient connection of the thief hatch to the tank.
- ^{iv} Normal Operations means all periods of operation, excluding Malfunctions. For storage tanks at well production facilities, normal operations include, but are not limited to, liquid dumps from the Separator.
- ^v https://earthworks.org/blog/breaking_all_the_rules_oil_and_gas_enforcement/

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